REMARKS

By the present amendment, independent claims 9, 10 and 15 have been amended to obviate the examiner's objections thereto and/or to further clarify the concepts of the present invention. In particular, claims 9, 10 and 15 have been amended to clarify the recitation as to component (C) recited in these claims. Furthermore, dependent claim 11 has been amended accordingly.

It is submitted that these amendments to the claims are helpful in distinguishing the subject claims over the cited prior art and do not raise new issues which would require further consideration and/or search. In addition, it is submitted that such amendments place the application in better form for appeal by materially reducing or simplifying the issues for appeal. Furthermore, no additional claims are presented without cancelling a corresponding number of finally rejected claims. In view of the above, it is submitted that entry of the above amendments is in order and such is respectfully requested.

In the Office Action, claims 9 and 15 were objected to with respect to the Markush language regarding component (C2). Inasmuch as this component (C2) has been canceled from the these claims, it is submitted that the objection is now moot. Accordingly, withdrawal is requested.

Claims 9-12 and 15-24 were rejected under 35 USC § 103(a) as being unpatentable over the newly cited '615 Kobayashi et al patent. In making this rejection, it was asserted that the cited patent teaches a composition containing (A) diacetal; (B2) hydroxypolycarboxylic acid, including 12-hydroxystearic acid; and (C2) aliphatic carboxylic acid salts. Further it was also asserted that although Kobayashi '615 patent does not disclose the composition comprising (A) + (B2) + (C2) to suppress odor and taste originating from sorbitol, the disclosure encompasses the composition of the present invention. Reconsideration of this rejection in view of the above claim amendments and the following comments is respectfully requested.

In response to this rejection, it is to be noted that the recited components of the method of presently claimed invention are directed to the specific combinations shown below.

(i) (B1) + [one member selected from the group consisting of (C1), (C3) and (C4)]

(ii) (B2) + [one member selected from the group consisting of (C3) and (C4)]

It is submitted that these specific combinations are not taught or suggested by the Kobayashi '615 patent. Moreover, the Kobayashi '615 patent only teaches a method of molding crystalline polyolefin resins capable of producing a high molding rate, molded articles having high rigidity (flexural modulus) and high surface gloss. However, it is to be specifically noted that the Kobayashi '615 patent is silent about suppressing odor and taste originating from a diacetal. Thus, one of ordinary skill in the art would not conceive of the presently claimed invention based on the disclosure of Kobayashi '615 patent.

Furthermore, inasmuch as claims 10-12 are dependent independent claim of claim 9 and claims 16-24 are dependent claims on independent claim 15. For the same reasons as set forth above, it is submitted that these claims are patentable over the Kobayshi ' 615 patent. Accordingly, withdrawal of the rejections under 35 USC § 103(a) and allowance of claims 9-12 and 15-24 over the cited patent are respectfully requested.

In addition, claims 9-12 and 15-24 were rejected under 35 USC § 103(a) as being unpatentable over the previously cited '843 Kobayashi et al patent further in view of the '615 Kobayshi et al patent as utilized in the previous rejection. In so doing, it was asserted that the former patent fails to teach component (C2) as presently claimed. The latter cited '615 patent was then relied upon to teach the inclusion of such a component. Reconsideration of this rejection in view of the above claim amendments and the following comments is requested.

The above remarks relative to the teaching deficiencies of the Kobayashi '615 patent are reiterated with regard to this rejection. As set forth above, the components of the method of the present invention are the combination of:

(i) (B1) + [one member selected from the group consisting of (C1), (C3) and (C4)]

(ii) (B2) + [one member selected from the group consisting of (C3) and (C4)]

Inasmuch as none of these specific combinations of components are mentioned in Kobayashi '615 or Kobayashi '843 patents, it is submitted that the rejection is not applicable.

Additionally, it is to be specifically noted that the Kobayashi '843 and Kobayashi '615 patents nowhere mention suppressing odor and taste originating from diacetal. Consequently, it is submitted that a person skilled in the art would not conceive the use of the above specific combination of components (B) and (C), and a method for suppressing aldehyde generation or a granular or powdery diacetal composition in which the transfer of odor and taste originating from the diacetal is suppressed, based on the disclosures of Kobayashi '615 and Kobayashi '843 patents. Therefore, independent claims 9 and 15 are unobvious over Kobayashi '615 patent in combination with Kobayashi '843 patent.

As above, claims 10-12 are dependent claims of independent claim 9, and claims 16-24 are dependent from independent cllaim 15. Therefore, these claims are also patentable over Kobayashi '615 patent in combination with Kobayashi '843 patent.

For the reasons stated above, withdrawal of the rejection under 35 U.S.C. § 103(a) and allowance of claims 9-12 and 16-24 over the cited patents are respectfully requested.

Claims 9-24 were provisionally rejected over claims 1-13 of the cited '088 patent to Nomoto et al under the judicially created doctrine of obviousness type double patenting. In making this rejection, it was alleged that the previously submitted terminal disclaimer did not correctly identify the subject Nomoto et al '088 patent.

Upon review of the previously submitted Terminal Disclaimer, it would appear that the assertion may be accurate. Another Terminal Disclaimer relative to the cited patent such that the patent which issues from this application is enforceable for the same period of time as the issued patent and thus there is no extension of protection for the common concept. Accordingly, withdrawal of the provisionally rejected of claims 9-24 over claims 1-13 of the cited '088 patent to Nomoto et al under the judicially created doctrine of obviousness type double patenting.

In addition, claims 9-24 were rejected under 35 USC § 103(a) as being unpatentable over the cited Nomoto et al '088 patent. In making this rejection, it was asserted that the patent constitutes prior art under 35 USC § 102(e) and thus that the rejection might be overcome by showing that the patent is disqualified under 35 USC § 103(c). Reconsideration of this rejection is requested in view of the following comments.

In the Action, it apparently was asserted that a proper statement that the patent still is assigned to the subject assignee had not been made. Please be advised that the Nomoto et al '088 patent is still assigned to the subject assignee, NEW JAPAN CHEMICAL. Thus, it is submitted that the provisions of 35 USC § 103(c) are applicable, since the subject application and the cited patent are assigned to the same assignee and the application which issued as the Nomoto et al '088 patent and the subject application were copending.

For the reasons stated above, withdrawal of the rejection under 35 U.S.C. § 103(a) and allowance of claims 9 through 24 over the cited Nomoto et al '088 patent are respectfully requested.

In addition, it was asserted that claims 9-24 were not patentably distinct from the claims of the cited Nomoto et al '088 patent. As before, the precise basis for this assertion has not been stated. However, it is noted that reference was made to paragraph 10 which is provisional rejection under the judicially created doctrine of obviousness type double patenting.

It is assumed that if the double patenting rejection has been obviated, the above rejection has been overcome as well. In addition, the reliance upon 35 USC § 103(c) as above also is sufficient to allege that the rejection had been overcome.

In view of the foregoing, it is submitted that the subject application is now in condition for allowance and early notice to that effect is earnestly solicited.

In the event this paper is not timely filed, the undersigned hereby petitions for an appropriate extension of time. The fee for this extension may be charged to Deposit Account No. 01-2340, along with any other additional fees which may be required with respect to this paper.

Respectfully submitted,

KRATZ, QUINTOS & HANSON, LLP

Donald W. Hanson
Attorney for Applicants
Reg. No. 27,133

DWH/evb

Atty. Docket No. **040338**
Suite 400, 1420 K Street, N.W.
Washington, D.C. 20005
(202) 659-2930

23850
PATENT TRADEMARK OFFICE

Enclosure: Terminal Disclaimer
Petition for Extension of Time